

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

MICHAEL SIMMS,

Plaintiff,

v.

MARK J. FERKO, *et al.*,

Defendants.

Case No. C06-5490RJB

ORDER ADOPTING REPORT
AND RECOMMENDATION

This matter comes before the Court on United States Magistrate Judge J. Kelley Arnold's Report and Recommendation. Dkt. 5-1. The Court has reviewed the Report and Recommendation (Dkt. 5-1), Plaintiff's Objections (Dkt. 9), and the entire record.

Plaintiff filed this 42 U.S.C. § 1983 action on August 25, 2006. Dkt. 1. Plaintiff made a motion to proceed *in forma pauperis*. *Id.* The Clerk of the Court sent Plaintiff a letter notifying him of certain deficiencies in his *in forma pauperis* application. Dkt. 2. Plaintiff cured some of the defects, but still failed to provide the Court with a copy of his prison account statement for six months and copies of his Complaint for service. Judge Arnold issued a Report and Recommendation, recommending a denial of Plaintiff's *in forma pauperis* application. Dkt. 5-1. Judge Arnold also recommended requiring Plaintiff pay the Court filing fee and provide copies of his Complaint or face dismissal of this action without prejudice. *Id.* The Report and Recommendation was returned to the Court as undeliverable on October 23, 2006. Dkt. 6. Pursuant to Local Fed. R. Civ. Pro. 41(b)(2) dismissal without prejudice of this matter

1 was noted for consideration on December 26, 2006. On December 27, 2006, Plaintiff filed an objection to
2 the Report and Recommendation, stating that he attempted to file a change of address with the Court.
3 Dkt. 9. Plaintiff requested additional time to provide his prisoner's account statement for the last six
4 months and copies of his Complaint for service. *Id.*


5 This Court granted Plaintiff an extension of time, and gave Plaintiff until February 2, 2007 to
6 comply with the Court's directives. Dkt. 10. Judge Arnold's Report and Recommendation (Dkt. 5-1) was
7 renoted for February 2, 2007. Dkt. 10.

8 This Court's Order (Dkt. 10) was sent to the address provided by Plaintiff (Dkt. 7) and was
9 returned as undeliverable on January 16, 2007, because Plaintiff refused delivery (Dkt. 11). Plaintiff has
10 failed to file any substantive objections to the Report and Recommendation. Plaintiff has been given
11 adequate time to respond.

12 Therefore, it is hereby, **ORDERED** that:

- 13 • The Court adopts the Report and Recommendation (Dkt. 5-1).
- 14 • Plaintiff's application to proceed *in forma pauperis* is **DENIED**. Plaintiff has thirty days
15 from entry of this order to pay the full \$350.00 filing fee or this action will be dismissed
without prejudice.
- 16 • The Clerk of the Court is directed to send uncertified copies of this Order to all counsel of
17 record, to any party appearing *pro se* at said party's last known address, and to the
18 Honorable J. Kelley Arnold and note the thirty day due date on Judge Arnold's calendar for
tracking.

19 DATED this 12th day of January, 2007.

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21 Robert J. Bryan
22 United States District Judge
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